

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-1943  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHNNY LEE MILLER,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
(2:91-CR-00022(6))

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(July 5, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Appellant Miller pleaded guilty to money laundering and use of a firearm during a drug trafficking crime. He was sentenced to 140 months imprisonment and other penalties. On appeal, he challenges the district court's failure to apply a Guideline amendment retroactively to his case and grant him an additional one-point level reduction for acceptance of responsibility.

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

The Guideline in question is § 3E1.1, which was amended effective November 1992 to provide in certain circumstances a three-level reduction in offense level for acceptance of responsibility. The retroactive application of Guideline amendments is determined by the policy statement contained in U.S.S.G. § 1B1.10(d). United States v. Miller, 903 F.2d 341, 349 (5th Cir. 1990). The policy statement listed which Guidelines amendments could take effect retroactively. Amendment 459, embodying the enhanced reduction for acceptance of responsibility, was not among them. Under the Guidelines, then, Miller was not entitled to retroactive application.

Miller also appears to contend that he is entitled to the desired retroactive application because the district judge, in another case, allegedly granted such relief. Assuming this complaint raises an equal protection challenge based on the different races of the defendants involved, it is meritless. Miller has supplied no evidence of the court's discriminatory purpose if she did indeed apply § 3E1.1 differently to Miller and to another defendant. See Lavernia v. Lynaugh, 845 F.2d 493, 496 (5th Cir. 1988) (requiring discriminatory purpose to create an equal protection violation).

The judgment of the district court is AFFIRMED.